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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/476,951	01/03/2000	TERRENCE C. WALSH	TIVI-B175	8530

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EXAMINER

HOBDEN, DAVID V

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 05/06/2002

11

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/476,951

Applicant(s)

WALSH ET AL.

Examiner

David V. Hobden

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☒ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-18 is/are rejected.
- 7) ☒ Claim(s) 1, 7, 10 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 January 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 24 July 2001 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Claim Objections***

2. Claims 1, 7, 10, and 14 are objected to because of the following informalities:

These claims use the limitation of "non-photoluminescent". Claim features should recite positive limitations to particularly claim and distinctly point out features of the invention. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. The term "sufficient" in claims 14 and 17 is a relative term which renders the claim indefinite. The term "sufficient" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The use of the

term "sufficient", in claim 14, line 5, and claim 17, line 6, is a relative term that does not provide a positive limitation to define the required reflectance factor.

4. Claims 5 and 18 contain the trademark/trade name "PVC material #291 obtained from A&B Plastics". Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe light gray polyvinyl chloride and, accordingly, the identification/description is indefinite.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 10, and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glatz *et al.* (5,904,017).

Regarding claims 1, 4, and 5, Glatz discloses a lighting apparatus having:  
a first extruded portion **216** shaped to mount on the nose of a stair step (figure 2;  
column 5, lines 41-60); and,

a second extruded portion **210** (located between **212** and **214** in figure 2)  
coextruded with the first portion having a polyvinyl chloride strip which is a non-  
photoluminescent (non-luminescent) material, the polyvinyl chloride strip positioned by  
the first portion to be disposed along the edge of the stair step (see column 4, lines 1-  
19, and lines 38-40).

Glatz does not disclose expressly where the second portion has a material  
selected to have a reflectance factor greater than or equal to light gray polyvinyl  
chloride, or where the polyvinyl chloride strip is light gray, the polyvinyl material #291 as  
available from A&B Plastics.

At the time the invention was made, it would have been obvious design choice to  
make the second portion from a material selected to have a reflectance factor greater  
than or equal to light gray polyvinyl chloride, or has a light gray polyvinyl chloride strip.  
The PVC material #291 may be obtained from A&B Plastics. The material specified in a  
claim must be described in generic terms such as its specific chemical name.

Any light color of polyvinyl chloride that would effectively reflect ambient light so  
as to be visible in a darkened environment would be acceptable; the specific color  
choice for the stair step would most likely be driven by the desire to match the stair step  
with the décor of the surrounding environment. The material specified in a claim must  
be described in generic terms such as its specific chemical name.

With regard to claim 2, where the first portion and second portion each being made of a plastic material (column 4, lines 14-19).

With regard to claim 3, where the second portion has a strip **216** positioned by the first portion to be disposed along the edge of a step **212** (figure 2, column 5, lines 54-55).

With regard to claims 10, 14, and 17, Glatz discloses a lighting apparatus having: a first extruded portion **216** shaped to mount on a nose **212** of a stair step; and, a second non-photoluminescent (non-luminescent tread) **200** strip (located between **212** and **216** in figure 2) coextruded with the first portion, having a strip of polyvinyl material selected to have a reflectance factor sufficient to illuminate an edge of the step, positioned by the first portion to be located at and visible along an edge of the step in a darkened environment without connecting the strip to a power source.

Glatz does not expressly disclose that the strip is reflective.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to make a strip along the edge of a stair step from a reflective material in order to improve its visibility in a darkened environment.

With regard to claim 14, Glatz discloses a lighting apparatus having: a first extruded portion **216** shaped to mount on a nose **212** of a stair step; and, a second extruded portion **206** coextruded with the first portion, the second portion having a non-photoluminescent (non-luminescent) material selected to have a reflectance factor sufficient to illuminate the edge of the stair step (see figure 2; column 4, lines 1-13, and lines 38-40).

Glatz does not disclose expressly where the second portion has a material selected to have a reflectance factor sufficient to illuminate the edge of the stair step.

At the time the invention was made, it would have been obvious design choice to make the second portion from a material selected to have a reflectance factor sufficient to illuminate the edge of the stair step. Any light color (column 4, lines 14-19) material that would effectively reflect ambient light so as to be visible in a darkened environment would be acceptable.

With regard to claim 15, the lighting apparatus of Claim 14 Glatz further discloses where the first portion and second portion each are made of a plastic material (column 4, lines 14-19).

With regard to claim 16, the lighting apparatus of Claim 14 Glatz further discloses where the second portion has a strip **210** (located between **212** and **214** in figure 2) positioned by the first portion to be disposed along an edge of the step.

With regard to claim 18, the lighting apparatus of Claim 17 Glatz further discloses where the strip has a PVC material #291 as available from A&B Plastics.

The PVC material #291 may be obtained from A&B Plastics. The material specified in a claim must be described in generic terms such as its specific chemical name.

5. Claims 7-9, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glatz, as applied to claim 1 or 10 above, in view of George (6,116,748).

With regard to claims 7 and 11, Glatz discloses a lighting apparatus mountable in connection with a step of a staircase, or a lighting apparatus, and having:

a first plastic extruded portion **212** (see figure 2) providing a step plate surface and a riser surface mounted at a right angle with respect to one another and dimensioned to be mounted on the nose portion of a stair step;

a second plastic non-photoluminescent (non-luminescent) light strip **200** (located between **214** and **216** in figure 2) coextruded with the first portion and located so as to be disposed at and visible along an edge of the step in a darkened environment.

Glatz does not expressly disclose that the strip is visible along an edge of the step in a darkened environment.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to make a strip along the edge of a stair step from a material that is visible in a darkened environment to improve safety.

Glatz does not disclose expressly,

a lamp mounted on a portion of a seat, the seat being located adjacent to the step.

George discloses a lamp mounted on a portion of a seat, the seat being located adjacent to the step.

Glatz and George are analogous art because both provide for an illuminated walkway to prevent a person from tripping or falling on the walkway in



darkened environment (Glatz: column 1, lines 4-12; George: column 1, lines 19-21, and lines 38-43).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use the seat mounted lamp of George to illuminate the stair steps of Glatz's invention.

The suggestion/motivation for doing so would have been to provide a source of light to illuminate the second non-photoluminescent (non-luminescent) plastic light reflective strip of Glatz's invention to improve visibility and, therefore, safety.

With regard to claims 8 and 12, George further discloses the apparatus of claims 7 and 10 where the lamp **24** includes at least one LED **46** arranged to illuminate the step **12** (column 3, lines 27-29).

With regard to claim 9 and 13, George further discloses the apparatus of claims 7 and 10 where the lamp includes a plurality of LEDs located beneath a shield **20**, the shield shaped and disposed to direct light from the plurality of LEDs onto the step (see figure 3; column 3, lines 11-30).

Therefore, it would have been obvious to combine George with Glatz to obtain the invention as specified in claims 7-9 and 11-13.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David V. Hobden whose telephone number is 703-305-4469. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra L O'Shea can be reached on 703-305-4939. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-8303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-0956.

*DVH*

DVH  
May 2, 2002

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